



EXECUTIVE SUMMARY

OFFICIAL TESTIMONY OF ROSE OSWALD POELS, VICE PRESIDENT, WISCONSIN BANKERS ASSOCIATION, ON APPLICATION FOR FEDERAL DEPOSIT INSURANCE FOR WAL-MART BANK

April 10, 2006

The Wisconsin Bankers Association ("WBA") wishes to raise several issues with regard to Wal-Mart's application and respectfully requests that the FDIC deny Wal-Mart's application for the reasons outlined in this testimony. WBA's arguments fall under four general headings.

1. The Activities Of The Proposed Wal-Mart Bank Mixes Banking And Commerce To Such An Extent That Significant Policy Questions Are Raised Which Should Cause The FDIC To Deny This Application.
2. As The Largest Retailer In The World, Wal-Mart's Massive Economic Power Presents Unique Concerns That Should Caution the FDIC In Considering Wal-Mart Bank's Application For Insurance As Compared To Other ILC Applications.
3. The Intent Expressed In Wal-Mart's Application To Offer Better Than Market Rate CDs To Charities And Institutional Investors Will Only Hurt The Very Communities Wal-Mart Claims It Will Help.
4. The Activities Set Forth In Wal-Mart's Current Application, And The Slippery Slope It Creates, Lead To A Result That Is Wholly Undesirable For America.

The vitality and stability of the banking system depends in large part on the sound participation of thousands of financial institutions. The potential for a Wal-Mart Bank to cause a shrinking banking population is very real, particularly if it is permitted to provide all the services outlined in its application, as such services will take Wal-Mart Bank right into the retail banking business. Such an enterprise is not good for the banking system or for the American public. The separation of banking and commerce exists for many real and prudent reasons. Those reasons should not be ignored in the context of this application and the ILC loophole in general.

4721 SOUTH BILTMORE LANE
MADISON, WI 53718

P.O. BOX 8880
MADISON, WI 53708-8880

608-441-1200
FAX 608-661-9381

www.wisbank.com

*Testimony of Ms. Rose Oswald Poels, Esq.
Wisconsin Bankers Association
4721 South Biltmore Lane
Madison, WI 53718
(608) 441-1205
ropoels@wisbank.com*



**OFFICIAL TESTIMONY OF ROSE OSWALD POELS, VICE PRESIDENT,
WISCONSIN BANKERS ASSOCIATION, ON APPLICATION FOR
FEDERAL DEPOSIT INSURANCE FOR WAL-MART BANK**

April 10, 2006

Thank you to the Hearing Officers and the Federal Deposit Insurance Corporation ("FDIC") for allowing me to come before you today to testify on behalf of the Wisconsin Bankers Association ("WBA") regarding Wal-Mart's pending application with the FDIC for Federal Deposit Insurance for its proposed Wal-Mart Bank ("Bank"). WBA is the largest financial institution trade association in Wisconsin representing over 25,000 employees of nearly 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the State.

WBA wishes to raise several issues with regard to Wal-Mart's application and respectfully requests that the FDIC deny Wal-Mart's application for the reasons outlined in this testimony.

As Wal-Mart's application denotes, the Bank will be chartered in the State of Utah as an Industrial Bank (formerly known as industrial loan corporations ("ILCs")). It will be headquartered in Salt Lake City, Utah, and will not be open to the public nor will it operate branch offices. According to its application, the principal business of the Bank is fourfold.

1. First, the Bank will serve as sponsor to provide access for Wal-Mart into the Automated Clearing House ("ACH") network for the purpose of presenting, processing and settling electronically converted checks.
2. Second, the Bank will act as sponsor for Wal-Mart with certain regional and national processing networks to present, process and settle on-line point of sale PIN authorized debit card transactions.
3. Third, the Bank will become a depository institution member of Visa and MasterCard network associations, and serve as a sponsor for Wal-Mart in order to present, process and settle point-of-sale credit card and signature card debit transactions.

4. Finally, the Bank will offer short-term certificates of deposit to two classes of depositors: non-profit, charitable and educational organizations designated as 501(c)(3) entities by the Internal Revenue Service; and individual investors generated through deposit brokers.

The Activities Of The Proposed Wal-Mart Bank Mixes Banking And Commerce To Such An Extent That Significant Policy Questions Are Raised Which Should Cause The FDIC To Deny This Application.

“Traditional” financial institutions are prohibited from mixing banking and commerce, and for good prudent reasons. As you know, the policy set forth by Congress decades ago separating banking and commerce activity was largely a reaction to the perception that banks, *especially* those in a larger conglomerate organization, had a disproportionate amount of economic power in the period leading up to the stock market crash of 1929. WBA strongly believes it is crucial to the overall economic health of this country to maintain the current strength and vitality of the banking system. Is it really good for this country to permit a commercial enterprise to engage nationally in the business of banking in the manner in which the Utah industrial bank charter permits? While laws permitting ILCs have been around for many years now, the nature and breadth of the Utah charter is very different from that which exists in the few other states recognizing an ILC charter.

Some argue that Congress’ intent is to completely eviscerate the long-standing separation of banking and commerce, and these individuals cite, in part, to the Gramm-Leach Bliley Act as evidence of that. The Gramm-Leach-Bliley Act permits regulated financial service companies greater involvement in mixing banking, insurance and investment activities. Indeed, this “mixing” of regulated financial services has been permitted by Wisconsin law for state chartered institutions for many years. This permission is logical given the intense regulatory scrutiny to which each of those industries is subject. That same level of consolidated regulatory oversight is missing with ILCs.

To counter the argument that the Gramm-Leach-Bliley Act is evidence of Congress’ intent to do away with the separation of banking and commerce, I would like to draw your attention to the very same law where Section 401 of Title IV of the Act specifically prohibits a commercial company from owning a unitary savings and loan holding company. If Congress’ intent was in fact to fully permit the mixing of banking and commerce, then Title

IV would never have been drafted. Instead, WBA believes that Congress' intent was to provide a measured step in its passage of the Gramm-Leach-Bliley Act rather than completely eviscerate the important separation between banking and commerce.

Recognizing this, the FDIC must remember the prudent rationale for the separation of banking and commerce in the context of this application. ILCs are already changing the nature of the banking system in this country. ILCs began in the early 1900s as small, state-chartered loan companies that primarily served the borrowing needs of industrial workers unable to obtain noncollateralized loans from banks.¹ The ILC industry has morphed over time to include some of the largest financial institutions with extensive access to the capital markets. Between 1987 and 2004, ILC assets grew over 3,500 percent from \$3.8 billion to over \$140 billion, while the number of ILCs declined about 46% from 106 to 57.²

In addition to the sheer size of ILCs, WBA is also concerned with the lack of supervisory authority the FDIC has over such consolidated entities. While WBA recognizes the FDIC has put into place a special "bank-centric" supervisory approach for examining such entities, it is not possible to fully understand or examine for the effect of the relationship between a commercial enterprise, like Wal-Mart, and its ILC.

In its application, Wal-Mart does not hide the fact that the commercial enterprise and the Bank are directly inter-related. In fact, it specifically states in its application that "Growth in the Bank's revenues will grow as Wal-Mart's revenues increase."³ While on paper this may sound good, how can the FDIC, under its limited supervisory authority, thoroughly examine the real effect of this inter-relationship on the Bank and, importantly, on the insurance fund?

Finally, when you look specifically at the Utah industrial bank charter, there is no "source of strength" doctrine. As a result, the parent company does not need to guarantee the losses of its industrial bank. This begs the question as to what happens to the customers of these institutions without any source of strength obligation if the parent company fails or decides not to further fund its investment in the ILC?

¹ Report to the Honorable James A. Leach, House of Representatives, on Industrial Loan Corporations dated September 2005, GAO-05-621, page 5.

² *Id.*

³ Page 7, Volume I of the Public File of Wal-Mart Bank's Application.

As The Largest Retailer In The World, Wal-Mart's Massive Economic Power Presents Unique Concerns That Should Caution the FDIC In Considering Wal-Mart Bank's Application For Insurance As Compared To Other ILC Applications.

Wal-Mart states in its application that it "is the largest retailer in the *world* in terms of total revenues."⁴ (emphasis added). In Wisconsin alone, WBA's calculations are that Wal-Mart operates 82 stores in many of its 72 counties.⁵ The size of Wal-Mart and the economic force of the company as a whole are such that the FDIC must consider the risk that an ILC of the type Wal-Mart is proposing in this application will have on the health of the banking system and the safety of the insurance fund. The economic force that a Wal-Mart store has on the economy of a local community in which it opens a store is significant. All you have to do is walk around any medium to small sized town in Wisconsin where a Wal-Mart store is now located and you will see that, as a direct result of Wal-Mart's presence, the community lost several local, small businesses such as hardware stores, drug stores and grocery stores. Yet, Wal-Mart does little to replace the lost community investment that those local businesses comprised in rural Wisconsin. This same pattern will repeat itself in the banking industry if the Wal-Mart Bank application is approved.

Furthermore, it is impossible for anyone to say such an application poses "no" risk to the safety of the insurance fund. Consider the unfortunate situation in this country where a growing number of large companies are facing hard economic times. United Airlines ("United") is just one example. United took advantage of the federal pension bailout laws to offset a funding shortfall in its pension fund. Despite the fact that United failed to revalue to market a growing shortfall of its contributions to its employees' pension fund, the government in the end picked up the difference. Is this a trend that will repeat itself? It is certainly possible, again, given the growing number of commercial companies filing for bankruptcy. There is no guarantee anyone can make that the same "hard times" that United Airlines faced and is facing, and that General Motors is facing, will "never" happen with Wal-Mart.

Even if such a large company only teeters on the brink of bankruptcy, there is a huge potential for the general public to "perceive" a problem in the safety of their money and cause a run on an industrial bank. While these depositors could move their money to other financial institutions because

⁴ *Id.*

⁵ See attached map, marked as Exhibit A, denoting the location of Wal-Mart stores in Wisconsin.

there are almost 9,000 financial institutions in the country from which to choose, the negative impact on the affected bank, and the insurance fund, is real.

One of the functions of the Bank would be to provide access for Wal-Mart into the ACH network. This ACH access would enable Wal-Mart to pay all of its employees directly through the network, thereby bypassing the banks which currently act as the ACH facility for Wal-Mart. This means a loss of fee income for such banks. But even more importantly, this is the beginning of a slippery slope into retail banking. It is not a stretch to then imagine Wal-Mart would want to offer their employees depository accounts so their wages could go directly into those accounts. Being one of the largest employers in the United States, millions of employees would no longer need their existing transaction accounts currently held at local, community banks.

As a sponsor into regional and national ATM/POS networks, the Bank will try to profit by the interchange on the PIN debit transactions that occur at their stores. They could also become a card issuer to their customers and, therefore, collect the interchange fees on all of the transactions performed with those cards. This would, again, substantially cut into fee income that is vital to many banks' survival, particularly in these times of flat and inverted yield curves.

As a sponsor into the Visa and MasterCard networks, banks will experience a loss of fee income for signature debit transactions similar to that described for PIN debit transactions. Right now, for example, Wal-Mart's credit, debit and electronic check payments today equal more than 140 million per month. If they join VISA or MasterCard, what would be the impact on the electronic payment system?

Clearly, the adverse impact of such activity on the health of the banking system would be great. If community banks lose this income, they may be forced to merge with other institutions to survive. Is a banking system in the United States comprised of only a handful of institutions a good thing? WBA does not believe it is.

Some argue that Wal-Mart's application is similar to that which the FDIC approved for Target Bank on August 27, 2004. WBA disagrees. First, Wal-Mart stores are larger and more prevalent around the country than Target stores. According to WBA's research, in Wisconsin, Target

operates only 35 stores compared to the 82 that Wal-Mart operates.⁶ Clearly, the economic force that Target brings is in no way akin to the massive economic power brought by Wal-Mart.

Furthermore, Wal-Mart has unsuccessfully attempted, and made no secret about the fact that it has a strong desire, to offer retail banking services. This application today, if approved, would give Wal-Mart a foot in that door. Each of the Bank's proposed services represents a slippery slope that quickly leads you to the conclusion that they will, in time, attempt once again to offer retail banking services.

Target, however, has not made any such statements or attempts to charter a bank for retail deposit taking purposes. In addition, unlike Wal-Mart, Target makes a meaningful commitment to give back to the local communities within which it operates and allows customers to direct contributions from Target to identified schools in their community. The mere fact that the FDIC approved Target Bank's limited purpose ILC application for FDIC insurance does not automatically mean that such approval must be given to Wal-Mart Bank. There are important differences between the two applications that justify the FDIC denying Wal-Mart Bank's application.

The Intent Expressed In Wal-Mart's Application To Offer Better Than Market Rate CDs To Charities And Institutional Investors Will Only Hurt The Very Communities Wal-Mart Claims It Will Help.

One of the quintessential underpinnings behind the success of community banking is the ability to give back and support the local community. Financial institutions take-in deposits and loan that money back out to their local customers and invest in their local communities. The ability of the Wal-Mart Bank to take-in deposits from selected groups is allowing them to put one foot in the door of retail banking operations. If Wal-Mart Bank is able to offer better than market rate CDs to 501(c)(3) organizations and institutional investors, that money will quickly leave the local bank in favor of Wal-Mart Bank. Is this the kind of competition that is good for the financial institution industry? Is the public better off with a banking system ultimately comprised of only a handful of financial institutions operating around the country rather than the almost 9,000 that currently exist? WBA does not think so and strongly believes it is not good public policy to have a

⁶ See attached maps, marked as Exhibits B and C, denoting the locations of both Wal-Mart and Target stores in Wisconsin.

very small number of behemoth financial institutions. Community banks serve an important purpose that should not be forgotten.

Moreover, again, this activity, if permitted, represents a slippery slope directly into retail banking. It is not an impossible leap to conclude that a product like a certificate of deposit offered to any 501(c)(3) organization could also be offered to the persons receiving benefit from that charity or educational institution. That would give Wal-Mart Bank a huge retail market consisting of people like students and the elderly – constituencies that are already well-served today by financial institutions.

The Activities Set Forth In Wal-Mart's Current Application, And The Slippery Slope It Creates, Lead To A Result That Is Wholly Undesirable For America.

As you know, Wal-Mart just made a change to its filed application. It has apparently withdrawn its request to be considered a special purpose bank such that it is exempt from any CRA requirements and now agrees to have some CRA requirements imposed on it. This change illustrates the point that Wal-Mart's intentions do change depending on what it believes is in its best interest.

As the agency created in 1933 for the purpose of restoring public confidence in the nation's banking system, the FDIC must carefully consider this application in that light. This is a significant responsibility and WBA appreciates the opportunity to provide the FDIC with testimony to hopefully assist the FDIC in making this important decision.

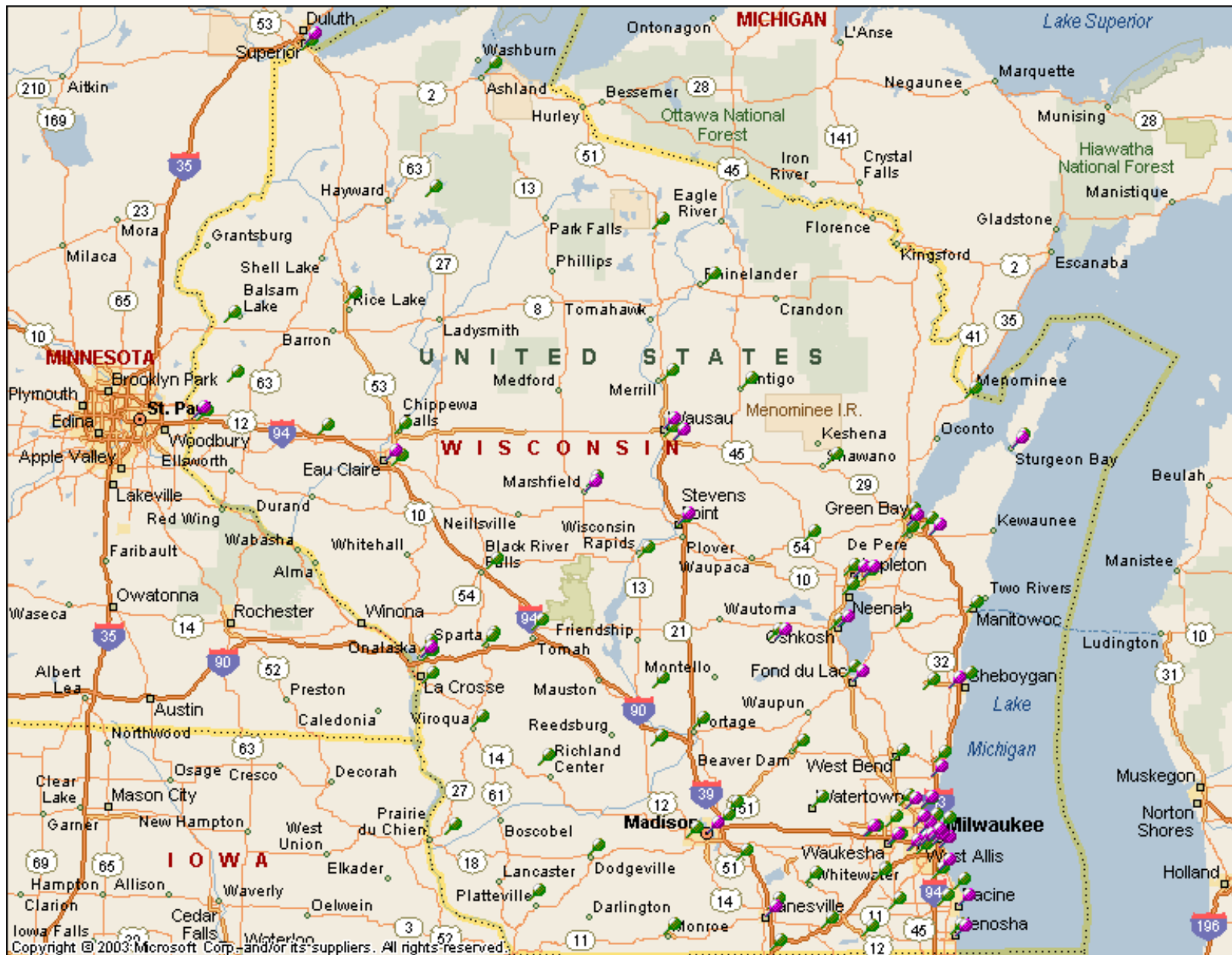
As stated above, WBA strongly believes that Wal-Mart's application for federal deposit insurance should be denied. Such an enterprise is not good for the health and stability of the banking system or for the American public. The separation of banking and commerce exists for real and prudent reasons. Those reasons should not be ignored in the context of this application and the ILC loophole in general.

If, however, the FDIC chooses to approve Wal-Mart's application, WBA implores the FDIC to only do so in such a way that there is a sound legal agreement with the government and the Bank that it will not operate any differently than what is stated in its application, at any time in the future, without express FDIC permission.



Thank you very much for your careful consideration of WBA's testimony. I would be happy to discuss my comments further with you.

Wisconsin Bankers Association Exhibit B

Walmart & Target Stores - Wisconsin, United States



Pushpins



-  Target Stores
-  Walmart Stores

Wisconsin Bankers Association Exhibit C

Walmart & Target Stores South Eastern Wisconsin, United States



Pushpins

-  Target Stores
-  Walmart Stores